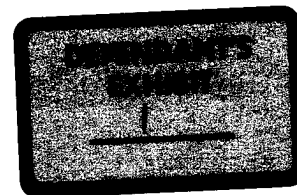


UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION



UNITED STATES OF AMERICA,

Plaintiff,

Criminal No. 08-20349  
HON. SEAN COX

-VS-

KENNETH IRWIN SMITH,

OFFENSE: 21 U.S.C. § 841 (a)(1)  
POSSESSION WITH THE INTENT  
TO DISTRIBUTE COCAINE BASE

Defendant.

MAXIMUM PENALTY: 20 years - life  
SUPERVISED RELEASE: 10 years  
MAXIMUM FINE: \$8,000,000

\_\_\_\_\_ /

**RULE 11 PLEA AGREEMENT**

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant  
KENNETH IRWIN SMITH, and the government agree as follows:

1. **GUILTY PLEA**

A. **Count of Conviction**

Defendant will enter a plea of guilty to **Count One** of the indictment.

Count One charges defendant with POSSESSION WITH INTENT TO  
DISTRIBUTE 50 GRAMS OR MORE OF COCAINE BASE, in violation of Title 21,  
United States Code, Section 841(a)(1).

FILED

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**B. Elements of Offense**

The elements of Count One, are:

- (1) First, that the defendant knowingly possessed a controlled substance.
- (2) Second, that the defendant intended to distribute this substance.
- (3) Third, that the controlled substance was in fact cocaine base, commonly known as "crack" cocaine, weighing fifty (50) grams or more.

**C. Factual Basis for Guilty Plea**

The following facts are a sufficient and accurate basis for defendant's guilty plea:

On February 26, 2008, troopers of the Michigan State Police stopped defendant's vehicle in Flint, Michigan. Defendant was arrested for driving with a suspended license, a misdemeanor in the state of Michigan. Defendant was searched incident to that arrest and 121 grams of cocaine base, commonly known as "crack" cocaine, were discovered in the back of his pants. Defendant confessed to possessing the cocaine base, or "crack" cocaine, with the intent to distribute.

**2. SENTENCING GUIDELINES**

**A. Standard of Proof**

The Court will find sentencing factors by a preponderance of the evidence.

**B. Guideline Range**

The parties disagree on the applicability of the career offender provisions of the guidelines. The government recommends that the Court determine defendant's guideline range is 262-327 months, as set forth on the attached worksheets. Defendant recommends that the Court determine his guideline

range without the application of the career offender provisions, subject to the statutory minimum of 240 months. The Court is not bound by either party's recommendation concerning the guideline range, and defendant understands that he will have no right to withdraw his guilty plea if the Court does not follow his recommendation. If the Court finds:

- a) that defendant's criminal history category is higher than reflected on the attached worksheets, or
- b) that the offense level should be higher because, after pleading guilty, defendant made any false statement to or withheld information from his/her probation officer; otherwise demonstrated a lack of acceptance of responsibility for his/her offense; or obstructed justice or committed any crime,

and if any such finding results in a guideline range higher than 262-327 months, the higher guideline range becomes the agreed range.

Based on the present circumstances, the U.S. Attorney recommends that the defendant be granted a reduction of two levels for acceptance of responsibility. Additionally, the U.S. Attorney agrees that the defendant has assisted the authorities, within the meaning of U.S.S.G. § 3E1.1(b), in the prosecution of defendant's own misconduct by timely notifying authorities of the intention to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. The U.S. Attorney therefore moves that the defendant be granted a third level reduction for acceptance of responsibility. The U.S. Attorney may recommend against giving defendant credit for acceptance of responsibility if,

after the guilty plea has been entered, the U.S. Attorney's office learns of information inconsistent with the adjustment.

Neither party may take a position concerning the applicable guidelines that is different from any position of that party as reflected in the attached worksheets, except as noted above and as necessary to the Court's determination regarding subsections a) and b), above.

**3. SENTENCE**

The Court will impose a sentence pursuant to 18 U.S.C. §3553, and in doing so must consider the sentencing guideline range.

**A. Imprisonment**

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the sentence of imprisonment in this case may not exceed the top of the sentencing guideline range as determined by Paragraph 2B.

**B. Supervised Release**

A term of supervised release follows the term of imprisonment. The Court must impose a term of supervised release of no less than ten years and up to the statutory maximum, which in this case is life. The agreement concerning imprisonment described above in Paragraph 3A does not apply to any term of imprisonment that results from any later revocation of supervised release.

**C. Special Assessment**

Defendant will pay a special assessment of \$100 and must provide the government with a receipt for the payment before sentence is imposed.

**D. Fine**

The Court may impose a fine on each count of conviction in any amount up to \$150,000.

**E. Restitution**

The Court may impose community restitution pursuant to 18 U.S.C § 3663(c)..

**4. WAIVER OF RIGHT TO DNA TESTING**

Defendant waives any right he has to move for an order requiring the DNA testing of evidence that was secured in relation to the investigation or prosecution of this case.

**5. OTHER CHARGES**

If the Court accepts this agreement, the government will amend the penalty enhancement provision filed pursuant to 21 U.S.C. § 851 to reflect only one prior drug conviction. In addition, the government will not bring additional charges against defendant based on any of the conduct related in the attached worksheets.

**6. EACH PARTY'S RIGHT TO WITHDRAW FROM THIS AGREEMENT**

The government may withdraw from this agreement if the Court finds the correct guideline range to be different from that determined by Paragraph 2B.

Defendant may withdraw from this agreement, and may withdraw his guilty plea, if the Court decides to impose a sentence higher than the maximum allowed by Part 3. This is the only reason for which defendant may withdraw from this agreement. The Court shall advise defendant that if he does not withdraw his guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Part 3.

**7. APPEAL WAIVER**

If the sentence imposed does not exceed the maximum allowed by Part 3 of this agreement, defendant waives any right he has to appeal his conviction or sentence. Defendant retains his right to directly appeal the Court's adverse determination of any disputed guideline issue that was raised at or before the sentencing hearing. The government agrees not to appeal any sentence within the guideline range it has recommended in Paragraph 2B, but retains the right to appeal any determination by the Court to apply a lower range or to impose a sentence below the guideline range that is unreasonable.

Defendant understands that defendants generally have the right collaterally to attack their convictions and sentences by filing post-conviction motions, petitions, or independent civil actions. As part of this agreement, however, defendant knowingly and voluntarily waives that right and agrees not to contest his conviction or sentence in any post-conviction proceeding, including, but not limited to, any proceeding under 28 U.S.C. § 2255.

**8. CONSEQUENCES OF WITHDRAWAL OF GUILTY PLEA(S) OR VACATION OF CONVICTION(S)**

If defendant is allowed to withdraw his guilty plea or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement. If additional charges are filed against defendant within six months after the date the order vacating defendant's conviction or allowing him to withdraw his/her guilty plea becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea or to any conduct reflected in the attached worksheets, defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

**9. PARTIES TO PLEA AGREEMENT**

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan.

**10. SCOPE OF PLEA AGREEMENT**

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. It supersedes all other promises, representations, understandings, and agreements between the parties

concerning the subject matter of this plea agreement that are made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

This agreement does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

**11. ACKNOWLEDGMENT**

The defendant acknowledges and understands that a conviction for an offense that is a felony or carries a statutory maximum potential punishment of imprisonment in excess of one year (regardless of whether the actual sentence is in excess of one year) makes it illegal under most circumstances for a person to possess or receive a firearm or ammunition that has been shipped in or affects commerce.

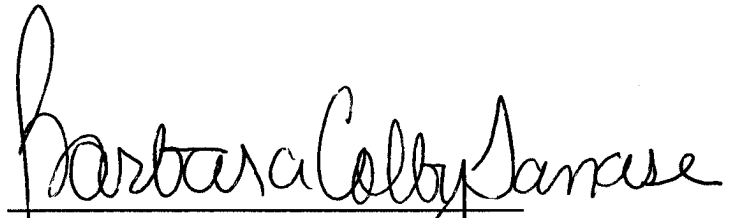


**12. ACCEPTANCE OF AGREEMENT BY DEFENDANT**


This plea offer expires unless it has been received, fully signed, in the Office of the United States Attorney by 5:00 P.M. on January 14, 2008. The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.

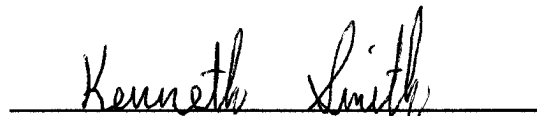
TERRENCE BERG  
*Acting United States Attorney*

  
CRAIG F. WININGER (P57058)  
*Assistant United States Attorney*

  
BARBARA COLBY TANASE (P38539)  
*Assistant U.S. Attorney  
Chief, Branch Offices  
Date:*

By signing below, defendant acknowledges that he/she has read (or been read) this entire document, understands it, and agrees to its terms. He/She also acknowledges that he/she is satisfied with his/her attorney's advice and representation. Defendant agrees that he/she has had a full and complete opportunity to confer with his/her lawyer, and has had all of his/her questions answered by his/her lawyer.

  
ANTHONY VANCE  
*Attorney for Defendant*

  
KENNETH IRWIN SMITH  
*Defendant*

Date: 

Defendant: Kenneth Smith Count: One  
Docket No.: 08-20349 Statute(s): 21 U.S.C. 841(a)(1)

## **WORKSHEET A (Offense Levels)**

Complete one Worksheet A for each count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction) before applying the multiple-count rules in U.S.S.G. ch. 3, pt. D. However, in any case involving multiple counts of conviction, if the counts of conviction are all "closely related" to each other within the meaning of U.S.S.G. § 3D1.2(d), complete only a single Worksheet A.

### **1. BASE OFFENSE LEVEL AND SPECIFIC OFFENSE CHARACTERISTICS (U.S.S.G. ch. 2)**

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
2D1.1	At least 50 but less than 150 grams of cocaine base	30

### **2. ADJUSTMENTS (U.S.S.G. ch. 3, pts. A, B, C)**

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>

### **3. ADJUSTED OFFENSE LEVEL**

Enter the sum of the offense levels entered in Items 1 and 2. If this Worksheet A does not cover every count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction), complete one or more additional Worksheets A and a single Worksheet B.

30

\*\*\*\*\*

*If this is the only Worksheet A, check this box and skip Worksheet B.*

X

*If the defendant has no criminal history, check this box and skip Worksheet C.*

Defendant: Kenneth Smith Count: One  
Docket No.: 08-20349 Statute(s): 21 U.S.C. 841(a)(1)

## **WORKSHEET B (Multiple Counts)**

### **Instructions (U.S.S.G. ch. 3, pt. D):**

- Group the counts of conviction into distinct Groups of Closely Related Counts. "All counts involving substantially the same harm shall be grouped together into a single Group." (*See* U.S.S.G. § 3D1.2.)
- Determine the offense level applicable to each Group. (*See* U.S.S.G. § 3D1.3.)
- Determine the combined offense level by assigning "units" to each Group as follows (*see* U.S.S.G. § 3D1.4):
  - assign 1 unit to the Group with the highest offense level,
  - assign 1 unit to each additional Group that is equally serious as, or 1 to 4 levels less serious than, the Group with the highest offense level,
  - assign ½ unit to each Group that is 5 to 8 levels less serious than the Group with the highest offense level,
  - assign no units to each Group that is 9 or more levels less serious than the Group with the highest offense level.

1. **GROUP ONE: COUNTS**  
ADJUSTED OFFENSE LEVEL \_\_\_\_\_

2. **GROUP TWO: COUNTS**  
ADJUSTED OFFENSE LEVEL \_\_\_\_\_

3. **GROUP THREE: COUNTS**  
ADJUSTED OFFENSE LEVEL \_\_\_\_\_

4. **GROUP THREE: COUNTS**  
ADJUSTED OFFENSE LEVEL \_\_\_\_\_

5. **TOTAL UNITS**

	unit
	unit
	unit
	unit
	units

6. **INCREASE IN OFFENSE LEVEL**

1 unit ☞ no increase	2 1/2 - 3 units ☞ add 3 levels
1 1/2 units ☞ add 1 level	3 1/2 - 5 units ☞ add 4 levels
2 units ☞ add 2 levels	> 5 levels ☞ add 5 levels

7. **ADJUSTED OFFENSE LEVEL OF GROUP  
WITH THE HIGHEST OFFENSE LEVEL**

8. **COMBINED ADJUSTED OFFENSE LEVEL**

Enter the sum of the offense levels entered in Items 6 and 7.


--

Defendant: Kenneth SmithCount: OneDocket No.: 08-20349Statute(s): 21 U.S.C. 841(a)(1)**WORKSHEET C (Criminal History)**

Date of defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses): \_\_\_\_\_

**1. PRIOR SENTENCES****Prior Sentence of Imprisonment Exceeding 13 Months (U.S.S.G. §§ 4A1.1(a)):****3 POINTS**

Enter 3 points for each prior adult sentence of imprisonment exceeding one year and one month that either (1) was imposed within 15 years of the defendant's commencement of the instant offenses (taking into account relevant conduct and stipulated offenses) or (2) resulted in the defendant's confinement during any part of that 15-year period. (See U.S.S.G. §§ 4A1.1(a), 4A1.2(d)(1), (e)(1).)

**Prior Sentence of Imprisonment of at Least 60 Days (U.S.S.G. §§ 4A1.1(b)):****2 POINTS**

Enter 2 points for each prior sentence of imprisonment of at least 60 days not counted under U.S.S.G. § 4A1.1(a) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(b), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and resulted in the defendant's confinement during any part of the 5-year period preceding the defendant's commencement of the instant offense (see U.S.S.G. §§ 4A1.1(b), 4A1.2(d)(2)(A)).

**Other Prior Sentences (U.S.S.G. §§ 4A1.1(c)):****1 POINT**

Enter 1 point for each prior sentence not counted under U.S.S.G. § 4A1.1(a) or (b) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and was imposed within 5 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(d)(2)(B)). NOTE: No more than 4 points may be added under this item.

<u>Date of Imposition</u>	<u>Status*</u>	<u>Offense</u>	<u>Sentence</u>	<u>Release Date**</u>	<u>Points</u>
3/17/97		Trafficking controlled sub. - Kentucky conv. Under name Montoya Hill	5 years		3
7/22/98		Escape - Under name Montoya Hill	2 years		3
8/24/00		Poss. Of Cocaine	6 months		2
3/9/01		Poss. Of cocaine	12 months		2
9/5/01		Maintaining a drug house	30 months - 15 years		3
1/28/02		Fleeing - Third degree	36 months		3

Defendant:	<u>Kenneth Smith</u>	Count:	<u>One</u>
Docket No.:	<u>08-20349</u>	Statute(s):	<u>21 U.S.C. 841(a)(1)</u>

(WORKSHEET C, p. 2)

## 2. COMMISSION OF INSTANT OFFENSE WHILE UNDER PRIOR SENTENCE (U.S.S.G. § 4A1.1(d))

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) while under any criminal justice sentence having a custodial or supervisory component, including probation, parole, supervised release, imprisonment, work release, and escape status. (See U.S.S.G. §§ 4A1.1(d), 4A1.2(m), (n).) List the type of control and identify the sentence from which it resulted.

2

## 3. COMMISSION OF INSTANT OFFENSE SHORTLY AFTER OR DURING IMPRISONMENT (U.S.S.G. § 4A1.1(e))

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) either less than 2 years after release from imprisonment on a sentence counted under U.S.S.G. §§ 4A1.1(a) or 4A1.1(b) or while in imprisonment or escape status on such a sentence. However, enter only 1 point for this item if 2 points were added under Item 2. (See U.S.S.G. §§ 4A1.1(e), 4A1.2(n).) List the date of release and identify the sentence from which it resulted.

0

## 4. PRIOR SENTENCE RESULTING FROM CRIME OF VIOLENCE (U.S.S.G. § 4A1.1(f))

Enter 1 point for each prior sentence resulting from a conviction for a crime of violence that did not receive any points under U.S.S.G. § 4A1.1(a), (b), or (c) because such sentence was considered related to another sentence resulting from a conviction for a crime of violence. But enter no points where the sentences are considered related because the offenses occurred on the same occasion. (See U.S.S.G. §§ 4A1.1(f), 4A1.2(p).) Identify the crimes of violence and briefly explain why the cases are considered related. NOTE: No more than 3 points may be added under this item.

0

## 5. TOTAL CRIMINAL HISTORY POINTS

Enter the sum of the criminal history points entered in Items 1-4.

18

## 6. CRIMINAL HISTORY CATEGORY

Total Criminal History Points

Criminal History Category

0-1

I

2-3

II

4-6

III

7-9

IV

10-12

V

≥ 13

VI

VI

\* If the defendant committed the offense before turning 18, indicate whether he or she was sentenced as a juvenile (J) or as an adult (A).

\*\* A release date is required in only three situations: (1) when a sentence covered under U.S.S.G. § 4A1.1(a) was imposed more than 15 years before the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) but resulted in his or her confinement during any part of that 15-year period; (2) when a sentence counted under U.S.S.G. § 4A1.1(b) was imposed for an offense committed before the defendant turned 18, but resulted in his or her confinement during any part of the 5-year period preceding his or her commencement of the instant offense (taking into account relevant conduct and stipulated offenses); and (3) when 2 criminal history points are added pursuant to U.S.S.G. § 4A1.1(e) because the defendant committed the instant offense (taking into account relevant conduct and stipulated offenses) shortly after or during imprisonment resulting from a sentence counted under U.S.S.G. § 4A1.1(a) or (b) or while he or she was on escape status for such a sentence.

Defendant: Kenneth Smith Count: One  
Docket No.: 08-20349 Statute(s): 21 U.S.C. 841(a)(1)

## WORKSHEET D (Guideline Range)

### 1. (COMBINED) ADJUSTED OFFENSE LEVEL

Enter the adjusted offense level entered in Item 3 of Worksheet A or the combined adjusted offense level entered in Item 8 of Worksheet B.

30

### 2. ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY (U.S.S.G § 3E1.1)

-3

### 3. TOTAL OFFENSE LEVEL

Enter the difference between Items 1 and 2.

27

### 4. CRIMINAL HISTORY CATEGORY

Enter "I" if the defendant has no criminal history. Otherwise, enter the criminal history category entered in Item 6 of Worksheet C.

VI

### 5. CAREER OFFENDER/CRIMINAL LIVELIHOOD/ARMED CAREER CRIMINAL (U.S.S.G. ch. 4, pt. B)

a. Total Offense Level: If the career offender provision (U.S.S.G. § 4B1.1), the criminal livelihood provision (U.S.S.G. § 4B1.3), or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a total offense level higher than the total offense level entered in Item 3, enter the higher offense level total.

37-3=34

b. Criminal History Category: If the career offender provision (U.S.S.G. § 4B1.1) or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a criminal history category higher than the criminal history category entered in Item 4, enter the higher criminal history category.

VI

### 6. GUIDELINE RANGE FROM SENTENCING TABLE (U.S.S.G. ch. 5, pt. A)

Enter the guideline range in the Sentencing Table (see U.S.S.G. ch. 5, pt. A) produced by the total offense level entered in Item 3 or 5.a and the criminal history category entered in Item 4 or 5.b.

262-327  
months

### 7. STATUTORY RESTRICTIONS ON OR SUPERSESSION OF GUIDELINE RANGE

If the maximum sentence authorized by statute is below, or a minimum sentence required by statute is above, the guideline range entered in Item 6, enter either the guideline range as restricted by statute or the sentence required by statute. (See U.S.S.G. § 5G1.1.) If the sentence on any count of conviction is required by statute to be consecutive to the sentence on any other count of conviction, explain why.

months

Defendant:	<u>Kenneth Smith</u>	Count:	<u>One</u>
Docket No.:	<u>08-20349</u>	Statute(s):	<u>21 U.S.C. 841(a)(1)</u>

## **WORKSHEET E (Authorized Guideline Sentences)**

### **1. PROBATION (U.S.S.G. ch. 5, pt. B)**

#### **a. Imposition of a Term of Probation (U.S.S.G. § 5B1.1)**

☒

1. Probation is not authorized by the guidelines (minimum of guideline range > 6 months or statute of conviction is a Class A or a Class B felony). If this box is checked, go to Item 2 (Split Sentence).

☐  
☐

2. Probation is authorized by the guidelines (minimum of guideline range = zero months).
3. Probation is authorized by the guidelines, provided the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention satisfying the minimum of the guideline range (minimum of guideline range > 0 months but ≤ 6 months).

#### **b. Length of Term of Probation (U.S.S.G. § 5B1.2)**

☐  
☐

1. At least 1 year but not more than 5 years (total offense level ≥ 6).
2. No more than 3 years (total offense level < 6).

#### **c. Conditions of Probation (U.S.S.G. § 5B1.3)**

The court must impose certain conditions of probation and may impose other conditions of probation.

### **2. SPLIT SENTENCE (U.S.S.G. § 5C1.1(c)(2), (d)(2))**

☒

- a. A split sentence is not authorized (minimum of guideline range = 0 months or > 10 months).

☐

- b. A split sentence is authorized (minimum of guideline range > 0 months but ≤ 10 months). The court may impose a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention for imprisonment, provided that at least one-half of the minimum of the guideline range is satisfied by imprisonment (if the minimum of the guideline range is 8, 9, or 10 months), or that at least one month is satisfied by imprisonment (if the minimum of the guideline range is 1, 2, 3, 4, or 6 months). The authorized length of the term of supervised release is set forth below in Item 4.b.

### **3. IMPRISONMENT (U.S.S.G. ch. 5, pt. C)**

A term of imprisonment is authorized by the guidelines if it is within the applicable guideline range (entered in Item 6 of Worksheet D). (See U.S.S.G. § 5C1.1.)

Defendant: Kenneth Smith Count: One  
Docket No.: 08-20349 Statute(s): 21 U.S.C. 841(a)(1)

(WORKSHEET E, p. 2)

**4. SUPERVISED RELEASE (U.S.S.G. ch 5., pt. D)****a. Imposition of a Term of Supervised Release (U.S.S.G. § 5D1.1)**

The court must impose a term of supervised release if it imposes a term of imprisonment of more than one year, or if it is required to do so by statute. The court may impose a term of supervised release if it imposes a term of imprisonment of one year or less.

**b. Length of Term of Supervised Release (U.S.S.G. § 5D1.2)**☐

1. At least 3 years but not more than 5 years, where the count of conviction is a Class A or a Class B felony, i.e., an offense carrying a maximum term of imprisonment  $\geq$  25 years.

☐

2. At least 2 years but not more than 3 years, where the count of conviction is a Class C or a Class D felony, i.e., an offense carrying a maximum term of imprisonment  $\geq$  5 years but  $<$  25 years.

☐

3. 1 year, where the count of conviction is a Class E felony or a Class A misdemeanor, i.e., an offense carrying a maximum term of imprisonment  $>$  6 months but  $<$  5 years.

☒

4. The statute of conviction requires a minimum term of supervised release of 120 months.

**c. Conditions of Supervised Release (U.S.S.G. § 5D1.3)**

The court must impose certain conditions of supervised release and may impose other conditions of supervised release.

**5. RESTITUTION (U.S.S.G. § 5E1.1)**☐

1. The court will determine whether restitution should be ordered and in what amount.

☐

2. Full restitution to the victim(s) of the offense(s) of conviction is *required* by statute. (See, e.g., 18 U.S.C. §§ 3663A, 2327.) The parties agree that full restitution is \$\_\_\_\_\_.

☐

3. The parties agree that the court may order restitution to the victim(s) of the offense(s) of conviction in any amount up to and including \$\_\_\_\_\_ (See 18 U.S.C. §§ 3663(a)(3).)

☒

4. The parties agree that the court may *also* order restitution to persons other than the victim(s) of the offense(s) of conviction. (See 18 U.S.C. §§ 3663(a)(1)(A), 3663A(a)(3).)

☐

5. Restitution is not applicable.



Defendant: Kenneth Smith Count: One  
Docket No.: 08-20349 Statute(s): 21 U.S.C. 841(a)(1)

(WORKSHEET E, p. 3)

**6. FINE (U.S.S.G. § 5E1.2)****a. Fines for Individual Defendants**

The court must impose a fine unless “the defendant establishes that he [or she] is unable to pay and is not likely to become able to pay any fine.” (See U.S.S.G. § 5E1.2(a).) Generally, the fine authorized by the guidelines is limited to the range established in the Fine Table. (See U.S.S.G. § 5E1.2(b).) However, there are exceptions to this general rule. (See U.S.S.G. § 5E1.2(b), (c)(4).)

**b. Fine Range from Fine Table (U.S.S.G. § 5E1.2(c)(3))****Minimum Fine****Maximum Fine**

\$17500

\$175000

**7. SPECIAL ASSESSMENT(S) (U.S.S.G. § 5E1.3)**

The court must impose a special assessment on every count of conviction. The special assessments for individual defendants are

- \$100.00 for every count charging a felony (\$50.00 if the offense was completed before April 24, 1996)
- \$ 25.00 for every count charging a Class A misdemeanor,
- \$ 10.00 for every count charging a Class B misdemeanor, and
- \$ 5.00 for every count charging a Class C misdemeanor or an infraction.

The defendant must pay a special assessment or special assessments in the total amount of \$ 100.

**8. ADDITIONAL APPLICABLE GUIDELINES, POLICY STATEMENTS, AND STATUTES**

List any additional applicable guideline, policy statement, or statute.

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**9. UPWARD OR DOWNWARD DEPARTURE (U.S.S.G. ch. 5, pts. H & K)**

List any applicable aggravating or mitigating circumstance that might support a term of imprisonment above or below the applicable guideline range.

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Defendant:	<u>Kenneth Smith</u>	Count:	<u>One</u>
Docket No.:	<u>08-20349</u>	Statute(s):	<u>21 U.S.C. 841(a)(1)</u>